

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7409 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 TO 5 : No

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RIZWANABEN W/O NOOR MUHAMMAD VALIBHAI JAJWALA

Versus

STATE OF GUJARAT

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Appearance:

MR VIPUL S MODI for Petitioner

Mr SP DAVE, AGP for respondents.

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 25/11/96

ORAL JUDGEMENT

Rule. Learned Government Counsel Mr. S.P.Dave waives the service of Rule for the respondents.

The petitioner before me, Smt. Rizwanaben had made the necessary application for the permission to run a place of public amusement and entertainment. The same came to be refused vide orders dated July 29, 1996, available at Annexure.C, passed by the Sub Divisional

Magistrate, Palanpur. The sole ground of rejection, as is evident from the above said communication is that, the husband of the petitioner was involved in certain criminal offences. It should not be overlooked that, in fact, the husband of the petitioner had made the similar application for the similar purpose qua the same premises and it came to be rejected earlier, on the very same count.

The contention coming from the learned Counsel for the petitioner is that, regard being had to the legal position, the petition or the application submitted by the petitioner could not have been rejected without having been afforded a reasonable opportunity of being heard. The learned Counsel also submits with great vehemence that, a disqualification, if at all came to be incurred by the husband, cannot be inherited by the wife and that, only because the husband is said to have been involved in the criminal offences, the same could not be taken as a disqualification for the wife.

In support of the above said contention, the reliance is being placed by the learned Counsel on the pronouncement of this Court, in the case of KISHORSINH SHYAMSINH THAKUR vs. STATE OF GUJARAT AND ORS., 20 GLR P. 177. In a similar fact-situation, the learned Single Judge of this Court has taken a view that, even if the licence already granted to the father came to be cancelled, the same could not be a ground for the refusal of a licence being asked for by the son. The thrust placed by this Court is that, the disqualifications are not hereditary in nature.

Having regard to the above said settled legal position, it appears that, if the husband had incurred the disqualification at all, then also, the petition presented by the petitioner was required to be considered and decided on independent consideration. Moreover, as it is evident from the orders at Annexure.C, no opportunity of being heard whatsoever was given to the petitioner.

Therefore, in the facts and circumstances, the present petition requires a partial recognition and the matter requires to be re-transmitted to the learned Sub Divisional Magistrate, Palanpur, for deciding the same according to law and on merits. To this extent, the petition is allowed and the orders under challenge, available at Annexure.C are hereby quashed and set aside and the matter is remanded to the said authority for the decision according to law and on merits. This should be

done, as early as possible, and at any rate, on or before 30th December 1996. It would be open for the petitioner to place reliance upon this High Court's pronouncement in the case of KISHORSINH (supra) before the said authority also. Rule is made absolute to the above said extent only. Direct service is permitted.

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